

REMARKS

Claims 1, 3, 5, 8–11, and 15–17 are currently pending.

Claim Rejections for Obviousness-Type Double Patenting

Claims 1, 3, 5–11, and 15–17 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1–21 of U.S. Patent No. 6,544,239 (Kinsey et al.). The Examiner states that, “Although the conflicting claims are not identical, they are not patentably distinct from each other because the current application is a broad version of the same limitations filed in Patent No. 6544239.”

Under MPEP § 804(II)(B)(1), the Examiner’s rejection should make clear:

- (A) The differences between the inventions defined by the conflicting claims – a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent.

The Examiner’s obviousness-type double patenting rejection was first raised in an Office Action mailed on July 22, 2003. In an Amendment filed on October 22, 2003, Applicants argued that the rejection was improper absent these factual findings. Applicants respectfully assert that the Examiner has not made the requisite factual findings in the instant Office Action.

Despite the lack of factual findings, Applicants respectfully submit that independent claims 1 and 1.1 are clearly distinguishable from the claims 1–21 in Kinsey et al.

Pending Claim 1

Lines 5–8 of pending claim 1 recite:

a blunting component comprising a shuttle member and *a blunting probe received in a slot* on the shuttle member, wherein the *blunting probe comprises a hollow tube open only at the ends* and a blunt tip, and wherein *the slot is capable of fluid flow therethrough*;

Applicants respectfully submit that claims 1–21 in Kinsey et al. do not recite any of the following limitations: “a blunting probe received in a slot,” that “the blunting probe comprises a hollow tube open only at the ends,” or “the slot is capable of fluid flow therethrough.” Consequently, Applicants respectfully submit that pending claim 1 is not simply “a broad version of the same limitations” because claims 1–21 in Kinsey et al. do not disclose or suggest every limitation in claim 1. Consequently, Applicants respectfully submit that the rejection is improper

and should be withdrawn. Claims 3, 5, and 8–10 are dependent on claim 1, and therefore, incorporate the limitations of claim 1, and recite further independently patentable features. Consequently, claims 1–21 in Kinsey et al. also do not disclose or suggest every limitation in any of claims 3, 5, and 8–10. Accordingly, Applicants respectfully submit that the rejection is improper and should be withdrawn.

Pending Claim 11

Lines 4–8 of pending claim 11 recite:

and a blunting component comprising a shuttle member and *a blunting probe received in a slot* on the shuttle member, the shuttle member defining a fluid chamber and *an access port for fluid flow*, and wherein *the blunting probe comprises a hollow tube open only at the ends* and a blunt tip, and wherein *the slot is capable of fluid flow therethrough*;

Applicants respectfully submit that claims 1–21 in Kinsey et al. do not recite any of the following limitations: “a blunting probe received in a slot,” “an access port for fluid flow,” that “the blunting probe comprises a hollow tube open only at the ends,” or “the slot is capable of fluid flow therethrough.” Consequently, Applicants respectfully submit that claim 11 is not simply “a broad version of the same limitations” because claims 1–21 in Kinsey et al. do not disclose or suggest every limitation in claim 11. Consequently, Applicants respectfully submit that the rejection is improper and should be withdrawn. Claims 15–17 are dependent on claim 11, and therefore, incorporate all of the limitations of claim 11, and recite further independently patentable features. Consequently, claims 1–21 in Kinsey et al. also do not disclose or suggest every limitation in any of claims 15–17. Accordingly, Applicants respectfully submit that the rejection is improper and should be withdrawn.

The Examiner has not provided any reason why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent. For all of these reasons, Applicants respectfully submit that the rejection is overcome.

Application No. : 09/757,138
Amendment dated June 30, 2004
Reply to Office Action of May 28, 2004

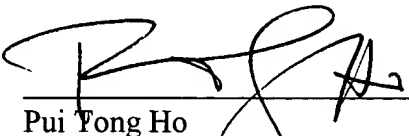
ICUMM1.012A

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 30, 2004

By: 
Pui Fong Ho
Registration No. 44,155
Attorney of Record
Customer No. 20,995
(949) 760-0404

H:\DOCS\PTH\ICU MEDICAL-BP\ICUMM1.012A\OA 4 ICUMM1.012A.DOC
062804